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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

MATTHEW U.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS  
COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Real Party in Interest.

F067057

(Super. Ct. No. 516177)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.  
Ameral, Judge.

Nadine Salim, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin L. McIver, Deputy County Counsel,  
for Real Party in Interest.

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\* Before Kane, Acting P.J., Poochigian, J. and Peña, J.

Matthew U. seeks extraordinary writ review from the juvenile court's orders issued at a contested 18-month review hearing (Welf. & Inst. Code, § 366.22, subd. (a))<sup>1</sup>, terminating his reunification services and setting a section 366.26 hearing as to his son Austin. (Cal. Rules of Court, rule 8.452.) Matthew contends the juvenile court erred in finding it would be detrimental to return Austin to his custody. Alternatively, he contends the Stanislaus County Community Services Agency (agency) did not provide him reasonable visitation. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

Matthew, age 25, is the presumed father of six-year-old Austin, the subject of this writ petition. Matthew has a cognitive learning disability. In addition, he was the subject of dependency proceedings as a teenager. In 2003, then 15-year-old Matthew was living on the streets of Livermore with his divorced mother, Irene, and his two brothers. The boys were underfed and not properly supervised. Matthew was taken into protective custody and placed in foster care. Subsequently, Matthew's father reunited with and stabilized the family. In April 2005, then 17-year-old Matthew was returned to his parents' custody under family maintenance and the dependency was subsequently dismissed. Matthew continued to live with his parents.

These dependency proceedings were initiated in October 2011, when the agency removed then four-year-old Austin along with his two half siblings from the custody of his mother, Samantha, because of her drug use and medical neglect. Matthew told the social worker he had not seen Austin in years and could not take custody of him because he could not support him. However, he wanted to be involved with Austin. Matthew described himself as "slow," and said he never worked but was looking for a job. He did not believe he would ever live independently. The children were placed together with maternal relatives.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The agency filed a dependency petition seeking the children's removal. In assessing the relatives for placement, the agency determined that Austin could not be placed with Irene because of her child welfare history.

The juvenile court ordered Austin detained and appointed a guardian ad litem for Matthew. In December 2011, the juvenile court ordered reunification services for Samantha, Matthew and Fredrick, the father of Austin's half siblings. Matthew's reunification plan required him to obtain and maintain a stable and suitable home for himself and Austin and to access parenting classes and employment training through the Regional Center of the East Bay. The juvenile court ordered weekly two-hour visitation and set the six-month review hearing for March 2012.

By February 2012, Matthew was expressing his desire to have custody of Austin and care for him with the assistance of his parents. The agency was encouraged that Matthew regularly visited Austin and was getting to know him. However, the agency was concerned that Matthew depended on Irene to manage his daily affairs.

In its report for the six-month review hearing, the agency recommended the juvenile court continue reunification services for Matthew and Fredrick and terminate services for Samantha. The agency advised the juvenile court Austin could not be returned to Matthew's custody as long as Matthew was living with Irene.

In June 2012, at the six-month review hearing, the juvenile court adopted the agency's recommendations and set the 12-month review hearing for November 2012. The juvenile court also granted the agency discretion to increase the frequency and duration of Matthew's visits.

In its report for the 12-month review hearing, the agency reported Matthew participated regularly and made progress in his parenting training. However, he continued to reside with his parents and relied on them for his day-to-day needs. Even though the agency regularly advised Matthew of its concern, he was unable to make other living arrangements for himself. Consequently, the agency recommended the juvenile

court terminate Matthew's reunification services and set a section 366.26 hearing.

In November 2012, the juvenile court released Austin's half siblings to Fredrick's care under family maintenance. It set a contested 12-month review hearing as to Austin, which was continued until January 2013.

In January 2013, after conferring with counsel, the juvenile court continued Matthew's reunification services until April. The juvenile court advised Matthew that he would not be able to have custody of Austin if he continued to live with his parents. The juvenile court also told Matthew to visit Austin alone and modified Matthew's case plan to include parenting labs.

In its report for the 18-month review hearing, the agency recommended the juvenile court terminate Matthew's reunification services because he still lived with his parents and relied on them for his basic needs. In every other way, however, he was participating in his services plan. He participated in 20 hours of parenting training a month, which included a weekly visit to his home. According to his parenting instructor, he put forth a "great effort" and "showed signs of improvement." In addition, he worked with East Bay Innovations to find affordable housing. However, he insisted on living in the Livermore area, which he could not afford. The agency reported Matthew continued to visit Austin regularly but their interaction was limited.

In April 2013, the juvenile court conducted a contested 18-month review hearing. County counsel took the position that Matthew had done his best to assume custody of Austin but lacked the capacity. Matthew's attorney argued the juvenile court should continue services because the agency acted unreasonably in not increasing visitation and Matthew needed more time to find a home.

Social worker Beth Morrison testified she was concerned Matthew could not attend to Austin's day-to-day needs because he did not take care of his own needs. She was also concerned Matthew did not interact with Austin during visitation. She

explained Matthew sat next to Austin during the first hour while Austin played a video game and invited Irene to participate in the second hour.

Ms. Morrison further testified Matthew needed to live separately from his parents because of their child welfare history of neglect. She did not, however, independently evaluate them for placement nor have any information that they used drugs or had any difficulty caring for their household. Nor was she aware of any referrals of neglect subsequent to Matthew's dependency case.

Ms. Morrison testified she did not increase Matthew's visitation because he did not demonstrate he could take care of his own needs, much less Austin's. She said Matthew had yet to spend the entire two-hour visitation alone with Austin.

Matthew testified he was working at Arby's as a cashier and relied upon family members for transportation. He said he did not use the bus but "could try." He said Austin played with video games because the other toys were broken. He did not know what grade Austin was in or the name of Austin's doctor. He said Austin never talked to him about school and he never asked about Austin's health or how he was doing in school. When the juvenile court asked Matthew why he did not inquire about Austin, he said "I don't know." He also told the court he was still a "little bit" afraid to live by himself.

At the conclusion of the hearing, the juvenile court found Matthew made limited progress and it would be detrimental to return Austin to his custody. The juvenile court also found the agency provided Matthew reasonable services, ordered them terminated and set a section 366.26 hearing. This petition ensued.

## **DISCUSSION**

### ***Detrimental Return***

Matthew contends there is insufficient evidence he and/or his parents posed a risk of harm to Austin. Therefore, he argues the juvenile court erred in finding it would be detrimental to return Austin to his custody.

At the 18-month review hearing, the juvenile court must return the child to parental custody unless the court finds, by a preponderance of the evidence, that doing so would create a substantial risk of detriment to the child's safety, protection or physical and emotional well-being. The failure of the parent to regularly participate and make substantive progress in the court-ordered reunification plan constitutes prima facie evidence of detriment. If the juvenile court decides it would be detrimental to return the child, then, by law, the court must terminate reunification services and set a section 366.26 hearing to select a permanent plan for the child. (§ 366.22, subd. (a).)

In reviewing a juvenile court's ruling at the 18-month review hearing, we consider the entire appellate record to determine whether it contains substantial evidence, i.e., evidence that is reasonable, credible, and of solid value, to support the juvenile court's finding. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) In so doing, we view the evidence in a light most favorable to the juvenile court. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If there is any substantial evidence to support the juvenile court's decision, we must affirm it. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

In this case, the juvenile court found Matthew made limited progress and substantial evidence supports that finding. By the 18-month review hearing, Matthew still had not satisfied one of the main objectives of his services plan, i.e. obtaining independent housing. On that basis alone, the juvenile court could find prima facie evidence of detrimental return because Matthew did not make substantive progress in his services plan.

Nevertheless, Matthew contends the agency failed to show Austin would be at risk of harm if placed with him in his parents' home. We agree the evidence was not compelling. The only evidence concerning the suitability of Matthew's parents was their neglect of him nearly a decade ago. However, that neglect arose out of his parents' separation and Irene's attempt to raise her sons in poverty. There was no evidence she

abused drugs or alcohol or did anything other than provide for them the best she could. That said, however, Matthew's parents did not request custody of Austin or ask the agency to evaluate their home. Consequently, the only evidence before the juvenile court was that Matthew's parents had a history of neglect. On that evidence the juvenile court could find on a preponderance of the evidence that they posed a risk of detriment to Austin if they assisted Matthew in caring for him in their home.

Further, even assuming Matthew's parents did not pose a risk of detriment to Austin, there is sufficient evidence that Matthew posed such a risk whether in his parents' home or living independently because, as the juvenile court concluded, Matthew lacked the capacity to safely parent Austin. Indeed, the record reflects that Matthew needed a great deal of assistance to meet his own basic needs. He needed someone to transport him wherever he went and Irene to help him grocery shop. He was afraid to live alone. In addition, he had no concept he should be concerned and knowledgeable about Austin's medical and educational status. One can readily imagine how Austin would be at risk under the circumstances.

We conclude substantial evidence supports the juvenile court's finding that Austin could not be returned to Matthew without exposing him to a substantial risk of detriment.

### ***Reasonableness of Services***

Matthew contends the juvenile court's reasonable services finding was error because the agency did not increase visitation. The reasonableness of visitation is significant because, even though the juvenile court can terminate reunification services at the 18-month review hearing if it finds detriment, it can also exercise its discretion and continue reunification services beyond the 18-month review hearing if it decides that services were not reasonable. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167.) In this case, however, we conclude substantial evidence supports the juvenile court's reasonable services finding. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.)

Here, the juvenile court granted the agency discretion to increase the frequency and duration of visits. Thus, the question is whether the agency acted reasonably in not exercising its discretion. We conclude that it did. Matthew never requested more or longer visits. Further, the objective of visitation was for Matthew to demonstrate his ability to parent Austin on his own. However, Matthew did not take advantage of the opportunity. Instead, he continued to divide visitation with his parents. As long as Matthew continued to include his parents, there was no reason for the agency to increase his visits.

Having concluded substantial evidence supports the juvenile court's reasonable services finding, we find no error in its orders terminating Matthew's reunification services and setting a section 366.26 hearing.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.